

APPLICANT:
**Harford County Sheriff/
Harford County Government**

**BEFORE THE
ZONING HEARING EXAMINER**

**REQUEST: Variances to construct an
addition that impact the Natural Resource
District**

**FOR HARFORD COUNTY
BOARD OF APPEALS**

HEARING DATE: May 23, 2007

Case No. 5594

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Harford County Sheriff/Harford County Government

LOCATION: 1030 N. Rock Spring Road, Bel Air
Tax Map: 40 / Grid: 3F / Parcel: 68
Third (3rd) Election District

ZONING: CI / Commercial Industrial

REQUEST: Variances pursuant to Sections 267-41D(5) and (6) of the Harford County Code, to construct an addition that impacts the Natural Resource District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject property, on which is located the Harford County Detention Center, is a 12.08 acre parcel zoned CI/Commercial Industrial, located just north of Bel Air on Rock Spring Road. The Detention Center was first located on the subject property in 1972, having had an initial capacity of 140 beds. Prior to that, the Detention Center had been located at 45 South Main Street, Bel Air.

Additional dormitory housing was built in 1984, which increased the capacity to 264 beds.

In 1992 existing work areas were converted to more dormitory space, and subsequent expansion in 1995 added more beds and administrative space. As a result of these various conversions and expansions, the Detention Center's current capacity is 474 beds.

The Detention Center site is bordered by Rock Spring Road (MD Route 924), the Bel Air Bypass, Bynum Run, and a small, unnamed tributary of Bynum Road to the south. The Applicant asserts that together with related buffers, the natural features on and bordering the site collectively create a highly impacted and constrained parcel.

In 1994 the County obtained a variance to the Natural Resource District to allow an expansion of the Detention Center. That decision noted an existing encroachment into the Natural Resource District buffer as a result of existing buildings and parking areas. A Natural Resource District variance was granted at that time with the Board of Appeals finding the requested additional encroachment to be insignificant in light of past impacts.

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For Harford County first testified Jesse Bane, Harford County Sheriff. Sheriff Bane explained that the Detention Center holds individuals both pre-trial and after sentencing for up to 18 months.

Demand for detention space is increasing. Occasionally, the capacity of the Detention Center has been exceeded. While the current capacity is 474 beds, Sheriff Bane estimates a current need of 500 beds. By the year 2020 his office indicates a need for between 727 beds to 800 beds.

Overcrowding at the Detention Center is seen as a problem and causes increased security concerns. It also places the County at risk for potential Court intervention due to overcapacity. If inmates are forced to be sent out to non Harford County facilities, the cost to the County is greatly increased. From an efficiency and economic point of view, it is best to house the inmates locally rather than send them out.

The Sheriff's office plans six new 48 bed units, which will provide an additional 288 beds. Additional support space is planned, including administrative offices and additional parking. The Sheriff believes that the proposed increase in the Detention Center is vital to the mission of the Sheriff's Office.

Next for the Applicant testified Harold Benfer, the architect responsible for the plans for the Detention Center expansion. Mr. Benfer explained that the site, due to its relatively unusual size and physical constraints, represent a number of challenges. Many options were examined, including abandoning the present facility and building at some other location. Splitting the facility onto two parcels was also reviewed. In total, five different options were reviewed to provide future capacity of the Detention Center. It was eventually determined that the best option was to work with the existing site by adding onto the site even with the physical constraints the road network and environmental features present.

Mr. Benfer explained that, because of the road network to the west and north and Bynum Run to the east, the only potential direction in which the expansion could take place is to the south of the present facility. In that area is also located existing parking, including parking areas which are unpaved and in grass. Parking at present is inadequate for existing needs, yet alone future needs. Mr. Benfer also explained that for commercial vehicle deliveries the road to the loading area is to be relocated to around the north side, or Route 1 side, of the facility.

Further complicating Mr. Benfer's work was his finding that old surveys of the property had mis-located the unnamed stream which runs generally from the south to the northeast along the southerly part of the property. The stream is in fact closer to the building, or farther north, than originally located. This finding changes the wetlands and buffer area designations. Accordingly, this further shrinks the footprint in which Mr. Benfer can locate the proposed improvements. One way in which Mr. Benfer compensated for this was to increase the height of the planned structure. However, the increase in height is allowed by Code and does not require a variance.

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Mr. Benfer described the design as presenting many challenges, again, primarily because of the extreme site constraints. One of Mr. Benfer's goals was to stay out of the wetlands and the natural resources buffer areas. For the most part, Mr. Benfer believes he succeeded, although there is a very slight impact in a few locations.

Next for the Applicant testified Edward Steere, an expert in site planning and land use planning, employed by Frederick Ward Associates, Inc. Mr. Steere explained that the Applicant's site actually consists of a number of separate parcels, all of which are to be consolidated.

In 1994 a variance was approved (see Decision dated April 25, 1994, Board of Appeals Case No. 4430), which allowed an impact to the Natural Resource District on the north side of the subject property, close to Bynum Run. That decision found;

“(no) . . . adverse impact to the Natural Resources District . . . To the contrary, the opinions and findings of the Applicant's expert witness and the Department of Planning and Zoning were that the proposed construction and resulting encroachment can be accomplished without any resulting adverse impact to the Natural Resources District provided that construction proceed in compliance with applicable regulations.”

In fact, according to Mr. Steere, that approved variance was not utilized and the Natural Resources buffer was not impacted at this area.

Mr. Steere explained that runoff from MD Route 924 and existing parking areas on-site, much of which are not paved, is causing erosion problems to the south of the parcel in the unnamed stream which feeds into Bynum Run and which runs along the south side of the parcel. This stream bed is experiencing erosion, and has moved somewhat over time. It is the plan of the Applicant to improve the stream bed by installation of rip rap and other erosion control methods. Mr. Steere believes that once complete, the improvements will result in less erosion and less impact on the stream and on Bynum Run.

Mr. Steere explained that the surrounding properties are used by commercial and higher intensity residential users. The improvements to the Detention Center, as is the Detention Center at present, will be buffered by existing woodlands and natural resource areas.

No wetlands are to be impacted by the proposed construction – only buffer areas. No building will be located within the designated flood plains.

Mr. Steere explained the impacts to the Natural Resources District, and the reason for the variances requested. To the north side, close to Bynum Run, which is the area in which the 1994 variance had been granted, will be constructed the roadway for commercial vehicles to reach the existing loading dock. Accordingly, a variance is requested to disturb a natural resource buffer for the roadway and associated grading. Next, farther to the east, the natural resources buffer will be disturb by a small amount of new paving, most of which will cover an existing, grass covered, traffic island. From generally the northeast corner to the southwest corner of the property, along

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its border, the proposed new building will somewhat impact the natural resources buffer along the unnamed tributary of Bynum Run. The building, and associated grading, will also result, however, in improving the banks and water quality within the unnamed tributary which, as was explained, should have a positive impact on Bynum Run. Somewhat south of the existing building will be additional paving for parking. As noted, much of this area has historically been used for parking, although it remains unpaved.

Mr. Steere believes that existing water quality in Bynum Run and the unnamed tributary will be upgraded as a result of the improvements made, and no adverse impact to the Natural Resources District will result if the variances are granted.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune believes the property is unique because of its configuration and the adjoining Natural Resource District. He notes that a variance was granted for a part of the property in 1994. As it did at that time, the Department again finds no adverse impact. The Department also believes that water quality will be improved by the construction and improvements to the unnamed tributary of Bynum Run.

The Staff Report states:

“The Department finds that the subject property is unique. This request is similar in nature to the previous request under Board of Appeals Case No. 4430 in 1994. The developable area of the subject property is extremely limited due to the presence of environmentally sensitive areas in form of Bynum Run, a tributary stream, and their associated non-tidal wetlands and 100-Year Floodplain. The Detention Center cannot be expanded to the east due to the presence of Bynum Run and its associated Floodway and 100-Year Floodplain. To close proximity of the northbound exist ramp of the US Route 1 Bypass precludes expansion of the facility to the north. Therefore, the proposed expansion of the Detention Center is limited to those areas on the south side of the facility which are within the Natural Resource District (NRD).”

Mr. McClune noted that the Maryland Department of Environment provided no comments to the proposal. The Soil Conservation District provided a letter of May 11, 2007 expressing its lack of comment about the proposal. The Town of Bel Air has no objection to the requested variances. The Harford County Health Department does not oppose the variances.

The Department, accordingly recommends approval, with conditions.

No testimony or evidence was given in opposition.

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APPLICABLE LAW:

Section 267-41D(5) and (6) of the Harford County Code allows the granting of a variance to the requirements of the Code:

- “(5) *Conservation requirements. The following conservation measures are required within this district:*
- (a) *All development shall minimize soil disturbance during development and shall reduce soil erosion and sedimentation. When developing site plans, consideration shall be given to maintaining the existing drainage ways within the Natural Resources District.*
 - (b) *Clearing or removal of natural ground cover and vegetation in preparation for development shall be minimized. Site development shall be clustered or designed in such a manner to preserve large contiguous tracts of woodland. Clearing of woodlands shall not reduce the area coverage of trees below seventy percent (70%). Along streams, a buffer with maximum width of fifty (50) feet, plus four (4) feet for each one percent increase in slope, measured from the water’s edge, shall be provided. Trees within the buffer may be harvested to remove disease, insect-damaged or fire-damaged trees to salvage the same or reduce potential stream blockage due to fallen timber. Essential access roads may be permitted to traverse the buffer.*
 - (c) *Sensitive environmental areas, including significant/special natural features, significant wildlife habitats, saturated soils, highly erodible soils and designated scenic area shall not be disturbed during any development.*
 - (d) *Any land in excess of twenty-five percent slope for an area of forty thousand (40,000) square feet or more shall not be cleared of natural ground cover or vegetation in preparation for development, except for necessary road and utilities. Not more than thirty percent (30%) of any land in excess of fifteen percent (15%) slope and less than twenty-five percent (25%) slope shall be cleared of natural ground cover or vegetation in preparation for development.*
 - (e) *Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.*

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- (6) *Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Harford County Detention Center was first constructed in 1972 at that time having a capacity of 140 occupants. Needless to say, with the growth of Harford County, Detention Center requirements have increased radically over the years. Today it has a capacity of 474 beds, and Sheriff Bane projects a need of up to 800 beds within the near future. These inmates are housed both pre-trial, and for sentences ranging up to 18 months.

Given the rather pronounced historical population growth of Harford County there is no reason to doubt the Sheriff’s projections.

The current Detention Center site, while it is somewhat over 12 acres in size is highly constrained by both natural and man-made features. To the north and west the property is impacted by MD Route 924 and the Bel Air Bypass, which form a boundary to those two sides of the site. To the west is Bynum Run which, with its associated wetlands and natural resources buffers, create an impenetrable boundary. To the south lie wetlands, including an unnamed tributary of Bynum Run. The unnamed tributary of Bynum Run has suffered deterioration over time due to runoff from MD Route 924, and the existing parking lots on the Detention Center, including areas which are used for parking but which are not paved.

Generally, the existing site is highly constrained, and is one which presents rather difficult problems for expansion. However, the very factors which act to constrain development also enhance its suitability as a Detention Center as these natural and man-made buffers tend to buffer the Detention Center from other surrounding uses.

The impacts into the natural resources buffer as proposed by the Applicant consist of the construction of the proposed building into a portion of the Natural Resource District which adjoins the unnamed tributary, and other intrusions for parking areas and a roadway. None of those impacts are perceptibly severe. In fact, a variance has already been granted for an impact to the north side of the property to allow the construction of a roadway. Furthermore, a variance for the construction of a parking area to the south will in effect allow the paving of areas which have been for many years now used by employees and visitors to the Detention Center. Furthermore, the construction of the building into the natural resources area adjoining the unnamed tributary which, while having the potential to impact the tributary, should result in increased water quality due to improvements which will be made by the Applicant to the stream bed.

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Furthermore, the extent of the impacts, especially when contrasted to the proposed increase to onsite capacity, is relatively minor and should result in little if any noticeable change to onsite environmental features.

Indeed, both the witnesses for the Applicant and the Department of Planning and Zoning are of the opinion that the impacts are minor in scope and nature and will have no adverse impact to the Natural Resources District.

The Applicant specifically requests a variance to Section 267-41D(5) of the Harford County Development Regulations which impose certain conservation restrictions on activities within the Natural Resources District. Principally among those restrictions is that a buffer of “at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.” It is, of course, these buffers which Harford County intends to impact. Nevertheless, each condition of Section 267-41D(5) is essential to help maintain the environmental quality of the adjacent natural resource features, and are discussed as follows:

(5) *Conservation requirements. The following conservation measures are required within this district:*

(a) *All development shall minimize soil disturbance during development and shall reduce soil erosion and sedimentation. When developing site plans, consideration shall be given to maintaining the existing drainage ways within the Natural Resources District.*

Testimony indicates that most of the construction planned is to be within areas that have been disturbed. The existing unnamed tributary from Bynum Run will be improved which will result in enhancement to water quality and flow. Accordingly, it is found that the proposed development will minimize soil disturbance, and that the existing drainage ways are being maintained, if not improved.

(b) *Clearing or removal of natural ground cover and vegetation in preparation for development shall be minimized. Site development shall be clustered or designed in such a manner to preserve large contiguous tracts of woodland. Clearing of woodlands shall not reduce the area coverage of trees below seventy percent (70%). Along streams, a buffer with maximum width of fifty (50) feet, plus four (4) feet for each one percent increase in slope, measured from the water's edge, shall be provided. Trees within the buffer may be harvested to remove disease, insect-damaged or fire-damaged trees to salvage the same or reduce potential stream blockage due to fallen timber. Essential access roads may be permitted to traverse the buffer.*

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The existing forest coverage, which is extensive and surrounds the Detention Center buildings and parking on the east and southeast sides, will not be reduced below seventy percent (70%).

- (c) *Sensitive environmental areas, including significant/special natural features, significant wildlife habitats, saturated soils, highly erodible soils and designated scenic area shall not be disturbed during any development.*

The Applicant does, in fact, propose to impact the unnamed tributary stream and non-tidal wetlands in the 100-Year Floodplain which are sensitive environmental features. However, improvements will be made, as discussed, to the unnamed tributary, and the disturbance which takes place will be, essentially, in areas which have historically been disturbed. It is accordingly found, based on the testimony and evidence of record, the impacts to sensitive environmental areas will not adversely impact the Natural Resources District.

- (d) *Any land in excess of twenty-five percent slope for an area of forty thousand (40,000) square feet or more shall not be cleared of natural ground cover or vegetation in preparation for development, except for necessary road and utilities. Not more than thirty percent (30%) of any land in excess of fifteen percent (15%) slope and less than twenty-five percent (25%) slope shall be cleared of natural ground cover or vegetation in preparation for development.*

There are no slopes in excess of fifteen percent (15%) on the property.

- (e) *Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.*

The proposal will impact non-tidal wetlands in the seventy-five foot (75') Natural Resource District buffer, as described. Nevertheless, it is found with the mitigation proposed by the Applicant, with the fact that the areas to be disturbed have historically been disturbed, and with a variance have previously been issued for at least a portion of the disturbed area, that there will be no adverse impact to the Natural Resource District if the requested variance to this section are granted.

Uncontradicted testimony and evidence of record is that the variances, if approved, will not adversely affect the Natural Resource District. All necessary agencies have been contacted, and none have expressed any concern about the requests.

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CONCLUSION:

Accordingly, it is recommended that the requested variances to the application of Section 267-41D(5), which allow impacts into the Natural Resource District, be approved, subject to the following conditions:

1. The Applicants shall obtain all necessary approvals and permits from the Maryland Department of the Environment (MDE) and/or U.S. Army Corps of Engineers for impacts to the stream and non-tidal wetlands.
2. The proposal shall comply with Chapter 131 of the Harford County Code, entitled, "Floodplain Management Program".
3. A detailed site plan shall be submitted for review and approval through the Development Advisory Committee (DAC).
4. A detailed landscaping and lighting plan shall be submitted to the Department of Planning and Zoning for review and approval prior to the issuance of a building permit. All lighting shall be directed down and away from the residences on the west side of MD Route 924. The landscaping plan shall specifically address screening of the parking areas along MD Route 924.

Date: June 8, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 9, 2007.